Department of L. & L. & Sett.

OFFICE of the Bd. of Gov.

STATION Chepauk.

Misc. No. 455

Dated 9. 2. 33

Land Revenue & Settlement,

M a d r a s.

Ref. C. *No.* 5841/32, *dated* 24th January 1933.

Sir,

Enclosures 3

Spare Copies

Advances - Loans - borrower becoming insolvents - summary recovery of the entire loan due - whether permissible - instructions solicited.

One Chayapuram Sanjeeva Reddi of Talur (C) was given two loans under the L.I.L. Loans Act on 12-4-1927 as shown below:--

L.I.L.O. 689/36 Rs.225.

,,, 694/36 450.

Ever since the loans were granted there was suspension of collection of loan instalments in Siruguppa taluk. The borrower has since filed an insolvency petition. It has been the practice in the district to order summary recovery of the entire loan in the interests of Government as soon as the borrower files an insolvency petition.

2. I had occasion to examine the question and found that recourse to an insolvency proceedings is not a valid reason for summary recovery under rule XII (page 65) of the Taccavi Manual. Of late, there have been many applications under the Insolvency Act 1920. So long as the borrower is regular in payment, summary recovery of the loan cannot be ordered under the rules now in force. I request the Board's instructions whether recourse to insolvency proceedings is an adequate reason for ordering summary recovery

3. In the present case summary recovery of the loans

was ordered by the Tahsildar for the reason that the borrower has filed an insolvency petition. The borrower has now filed a petition copy enclosed in the Sub Court praying that the Collector may be restrained from proceeding with the attachment of the moveables and immoveables pending the disposal of the insolvency petition. A counter prepared by the Government Pleader is enclosed fo approval.

4. The petition is posted to 24-1-33 but I am aski the Sub Judge to adjurn it for a month more.

25.1.33

For Collector.

In the court of the Subordinate Judge of Bellary

I.P. 66/32 I.A. 454/32.

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Chagapuram Sanjeeva Reddi Petitioner

and

Maribasavanagowd and others. Counter petitioners.

Petition on behalf of petitioner under S.5 of the Provincial Insolvency Act -

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Accompanying affidavit it is prayed that the 13th counter petitioner the Collector of Bellary be restrained from distraining the moveables and attaching the immoveables of the petitioner during the pendency of this Insolvent petition~~s~~

In the Court of the Subordinate Judge of Bellary.

I.P. 66/32 I.A. 454/32

Chagapuram Sanjeeva Reddi Petitioner

Maribasavanagowd and others - counter petitioners

Affidavit

I, Chagapuram Sanjeeva Reddi son of Hanumantha Reddi 25 years, Pakanati Kapu, cultivator, Taloor, Siruguppa Taluk do hereby state on solemn affidavit herein.

1. I am the petitioner herein.

2. The 13th counter petitioner, the Collector of Bellary has instructed the village to attach the moveable and immoveable properties of mine to realise their takkavi dues.

I have applied through my vakil, to the Collector of Bellary and the Tahsildar of Siruguppa to stay their hands as the above petition is pending. No reply has been received from them. But the village officers are bent upon attaching the properties and will not desist till they get orders to do so.

4. In these circumstances I submit that it is necessary in the ends of justice that suitable orders be passed permitting the 13th counter petitioner from carrying out his threat through the village officers till the disposal of this petition.

In the Court of the Subordinate Judge of Bellary.

Insolvency Petition No.66 of 1932.

I.A. No.454/32.

In the matter of the insolvency of Chagapuram Sanjiva Reddy.

B e t w e e n:--

Chagapuram Sanjiva Reddy ... Petitioner.

a n d

Maribasavanagowd and others ... Counter-petitioners.

Counter on behalf of the 13th Counter-petitioner.

1.. This counter-petitioner is a secured creditor under Section 5 of the Agricultural Loans Act, Section 7 (a) of the Land Improvement Loans Act read with Section 5 of the Revenue Recovery Act.

2. This counter-petitioner possesses a preferential claim over the properties of the insolvent.

READ AGAIN B. P. No. _____ , dated _____ 193

" " " _____ , " _____ 193

READ ALSO

Register No. _____ ; From the P. 167. 1-356/33 Q , No. _____ , dated _____ 193

" " _____ , " " _____ , " _____ , " _____ 193

" " _____ , " " _____ , " _____ , " _____ 193

RESOLUTION. Vide 455 dated 9.2. 193

The BS considers that the practice followed in the District, i.e. Summary recovery of the entire loan as soon as the borrower files an insolvency petn, is Correct. ~~If a man is insolvent he will not pay his next instalment and the Summary recovery of the entire loan should be the normal course~~

2/ The Draft of the Counter statement submitted by the Collector is approved subject to the deletion of the words "Section 5 of the Agriculturists Loans Act" in para 1 thereof and the substitution of —

10

"Section 7 (a)" for "Sec 7(a)"
in the same paragraph

Advances - Loans - (Bellary) - Borrower becoming insolvent - Summary recovery of the entire loan - Instructions.

A.S. (Sett).

Please see Collr's letter and enclosures at pp. 1-8 cf

2. The Collr's query is whether recourse to insolvency proceedings is an adequate reason for ordering summary recovery of the entire loan due. Under Rule XII of the Loans Rules summary recovery of the entire amount or any part thereof may be ordered for failure to perform any of the conditions on which the loan was granted. These conditions are set forth in para 2 of the loan order Form No.8. One of the conditions is regular repayment of the instalment. In the case of a ~~borrower~~ debtor filing an insolvency petition his properties are liable to be taken under the management of the court, even on making an order admitting the petition - Vide Section 20 of the Insolvency Act.- i.e., to say even before he is adjudged an insolvent. If this happens, the debtor (borrower) will not be enabled, in consequence of his properties falling under the court's management, to discharge his loan dues to Government re-

.nsolvency petition, in so far as it
:opardizes the regular recovery of the
stalments, will thus amount to a de-
ault~~in~~g payment and summary recovery
)pears to be justified.

Government are in this case a
secured creditor" and Sub Clause 6 of
ection 28 of the Insolvency Act would
seem to confer on Government the power
bring the security lands to sale
respective of the final adjudication
the court.- Vide also para 3 of the
unter statement at page 7 c.f., Thi
ocedure seems necessary as otherwise
vernment may have to lose a major
rtion of their dues.- (Vide e.g., the
se in B.P., Misc., No. 3605 d/6-12-32
ere the collector had relinquished
e security and failed to bring the la

1. This counter-petitioner is a secured creditor under section 7 (a) of the Land Improvement Loans Act read with Section 5 of the Revenue Recovery Act.

2. This counter-petitioner possesses a preferential claim over the properties of the insolvent, which have been hypothecated to him under the security bond executed on

3. This counter-petitioner as a preferential and secured creditor is entitled to proceed against the above properties of the insolvent for the realisation of the Takkavi dues and he is not affected by the insolvency proceedings at all.

4. This counter-petitioner prays that the petitioner's application may be dismissed with costs."

If the amounts realised by the sale of the security lands do not suffice for the ~~Govt.~~ dues, Govt. may, under Section 47 (1) of the Insolvency Act, ask for the balance due to them.

5. As these appear to be matters of general importance it is for consideration whether the Govt. Pleader may be consulted u.o. the Collr., being told to apply for a further adjournment if necessary.

proceedings it is evident that the borrower does not intend to repay the dues of Govt. and if the Govt. do not take such action as is open to them as secured creditor they will lose the benefit they are entitled to. ~~as secured creditor.~~ Rule XII of the Loans Rules does not refer to insolvency proceedings but as the borrower does not propose to pay the amount due to Govt. it seems open to Govt. to proceed to take action to attach the properties hypothecated and others moveable and immovable. It is the duty of Govt. to do so being custodian of public revenue.

The Collr. has not reported whether the borrower executed the works for which the loans were granted.

I see no need to consult the G. P. Modes. Colls. only a simple question — is the practice prevailing in Bellary correct? I think it is. To say that the borrower is regular in payment — when he is bankrupt — so admits that he'll now cease to pay his instalments, seems to me an interpretation that ignores the spirit of the rules altogether; and of course to treat summary recovery as barred puts Govt. in a hopeless position. Sec. 28(6) of the Prov. Insolv. Act is clear enough, and it wld. be absurd for Govt. to abrogate by rule an advantage that is given to secured creditors